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C O N F I D E N T I A L SANTO DOMINGO 001246

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TAGS: [CJAN](#) [CVIS](#) [KCRM](#) [SNAR](#) [PGOV](#) [DR](#)

SUBJECT: DOMINICAN SUPREME COURT JUSTICES FREE NARCO
FUGITIVES ON QUESTIONABLE PRETEXT

REF: 2003 STATE 303696

Classified By: EcoPol Counselor Michael Meigs for
reasons 1.4 (b) and (d)

¶1. (C) Summary. In yet another bizarre turn in the Juan Flete - Lourdes Machuca extradition saga (reftel), the five justices of the Penal Chamber of the Dominican Supreme Court have rejected the use of confidential witnesses in establishing probable cause in extradition proceedings - freeing both Flete and Machuca and probably undercutting the future extradition of narcotics traffickers and other organized crime figures. Members of the Attorney General's office smell a rat and suggest two of the judges may be in the pocket of narcotics traffickers. End summary.

Background: Case History

¶2. (SBU) According to a U.S. indictment, between 2000 and 2003, husband-and-wife team Juan Flete and Lourdes Machuca trafficked hundreds of kilograms of cocaine in Massachusetts and New York. They then set out to launder the proceeds through a number of mechanisms, including smuggling several million dollars worth of U.S. currency back to the Dominican Republic aboard automobiles destined for export. Before a U.S. indictment was handed down for these activities on April 24, 2003, the couple fled U.S. jurisdiction for the Dominican Republic.

¶3. (SBU) That Flete was no virgin in regard to criminal activity is clear: his record includes a 1991 racketeering conviction, a 1993 conviction for possessing cocaine with intent to distribute, and a 2002 conviction for knowingly receiving stolen property and possessing a dangerous weapon. On the latter occasion the facts of the case demonstrate that a narcotics sniffer dog's alert to Flete's vehicle sparked the discovery of approximately USD 280,000 in currency hidden in the car, as well as a loaded illegal handgun.

¶4. (SBU) But what really ties Flete and his wife to a narcotics and money-laundering conspiracy during the time in question is the testimony of unnamed cooperating witnesses, determined by U.S. authorities to be reliable.

¶5. (SBU) Unfortunately for the administration of justice in the Dominican Republic, in their decision the five members of the Criminal Chamber of the Dominican Supreme Court, without making any finding regarding the reliability of the specific witnesses, simply determined the use of confidential witnesses to be inherently untrustworthy and insufficient to establish probable cause. This blocked the possibility of extraditing the defendants for their cocaine trafficking activities. This reasoning flies in the face of Court precedent, most notably in the 2004 extradition case of cocaine kingpin Quirino Ernesto Paulino Castillo.

¶6. (SBU) The same Court also refused to extradite on money-laundering charges. While unpalatable, this part of the decision was at least well explained. The defendants had been "absolved" of money-laundering charges by a lower Dominican court, a legally mandated measure taken after local prosecutors dropped their charges in order to clear the way for extradition. The Court decided that U.S. court proceedings on the same grounds would constitute double jeopardy.

Confidential Witness

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¶7. (SBU) The U.S. Government's primary witness (CW1) is certainly no angel. He purports to have direct knowledge of

the workings of the Flete organization. Per the affidavit of the U.S. Prosecutor (AUSA), after Machuca recruited CW1 to sell drugs on behalf of Flete, he did, in fact, receive from Flete two kilograms of cut cocaine for sale in the summer of 2000 for the purchase price of USD 16,000 per kilogram. Two weeks later CW1 received three additional kilograms of uncut cocaine for sale from Flete at a substantially higher price. He subsequently received between three and four kilograms of cocaine for sale from Flete approximately every two weeks through early 2001. After a brief pause, cocaine sales resumed in the summer of 2001, with the transfer of more than 150 kilograms of cocaine to CW1 at the price of USD 20,000 per kilogram.

¶8. (SBU) This same witness spoke directly to Flete in the summer of 2001 regarding a scheme to ship cars loaded with drug proceeds to the Dominican Republic. In one case more than USD 2,000,000 was concealed. Machuca took responsibility to see that the cars avoided Dominican customs inspection.

Corroboration

¶9. (SBU) Evidence tending to demonstrate the credibility of CW1 includes records demonstrating the couple purchased more than USD 600,000 worth of luxury automobiles, many of which were shipped to the Dominican Republic. This was during period where their Federal tax returns reported an annual income not exceeding USD 12,500. State and local authorities confirmed that various residences, self-storage units, and businesses were associated with Flete and Machuca, as alleged by the witness.

¶10. (SBU) Additional corroboration comes in the form of a second confidential witness, described as a "long-time acquaintance" of Flete and Machuca who also regularly made multi-kilogram purchases of cocaine from them during the latter half of 2000.

¶11. (SBU) A third confidential witness who worked at a car dealership confirmed that Machuca purchased several of the automobiles in question under the alias "Carmen Hernandez."

Dominican Processing Marred by Corruption and Delay

¶12. (SBU) With this wealth of evidence, one might have anticipated a speedy return to the United States for these fugitives. Local events and dubious decisions, however, proved insurmountable obstacles. This can be quickly summarized in a timeline:

03/31/03 -- Both were arrested on or about March 31, 2003, on local charges, to include money laundering.

10/29/03 -- Embassy requested extradition in Note 246 - extradition based on indictment filed 04/24/03 in the U.S. District Court for the District of MA. The indictment alleges: 1 count conspiracy to possess cocaine with intent to distribute and an assortment of money laundering offenses under 18 USC 2 and 1956, as well as 31 USC 5324.

03/23/04 -- Released from custody by Dominican Attorney General Victor Cespedes on purported health/humanitarian grounds (according to Cespedes Machuca was suicidal). Neither the local case nor the extradition request was dismissed.

04/07/04 -- Embassy informed by credible source that release involved substantial payoff and sexual favors.

06/23/04 -- Extradition request reiterated in Note 112.

05/25/05 -- Supreme Court orders provisional arrest under extradition warrant

07/01/05 -- Both were arrested.

08/12/05 -- Supreme Court rules that extradition request is "suspended" while local charges are pending. Defendants released.

01/03/07 -- Prosecutor petitions to drop local charges.

01/16/07 -- Court of First Instance (Trial Court) "absolves" defendants of all local charges (money laundering) as required by Criminal Procedures Code Art. 337.

02/19/07 -- Supreme Court "reactivates" extradition request.

03/16/07 -- Both were re-arrested by Dominican law enforcement.

05/09/07 -- Supreme Court finds money laundering issue to be resolved by lower court's decision, given issue of double jeopardy. Finds lack of probable cause on cocaine conspiracy charge. Defendants freed.

¶13. (SBU) In short, four years working toward a resolution on local charges resulted in little significant movement to conclusion and a strong impetus to drop local charges despite risks of a double jeopardy finding on money laundering charges (the assumption being that the defendants would escape local justice in any event).

¶14. (SBU) Embassy predicted, erroneously as it turned out, that the defendants would be extradited on the cocaine charges regardless of whatever decision was taken on the money laundering issue.

The Supreme Court's ruling

¶15. (SBU) In a surprise move, the Penal Chamber justices held for the first time that confidential witnesses are inherently untrustworthy and provide an insufficient foundation upon which to base probable cause. Probable cause is a requirement of all extraditions.

¶16. (U) In a translation of the Court's own words:

-- Considering, as has been said, that the petition for extradition is based on three charges, two referring to money laundering and one for conspiracy to possess cocaine with the intent to distribute... (p.33, para 2)

-- Considering, that, finally, the charge of conspiracy to distribute cocaine that has been attributed to the defendants by U.S. criminal (law enforcement) authorities is sustained only in a VAGUE MANNER by virtue of SUPPOSED WITNESSES whose names are not mentioned in the extradition petition, this Criminal Chamber (of the Supreme Court) is inclined to think that there exists a reasonable doubt concerning the existence of this crime (charge); (p. 34, 1st full para) (EMPHASIS ADDED)

-- Considering that . . . (the defendants) were already irrevocably judged and discharged by a Dominican tribunal in relation to those same charges (money laundering) that were the grounds for the petition . . . accepting these would be an attack against the sovereignty of the Dominican State and, as a consequence, a failure to recognize the attributions the Constitution attributes to Dominican tribunals; (p.34, 2nd full para)

-- . . . accepts the conclusions of the defense . . .and, as a consequence, declares from a judicial point of view the rejection of the (request for extradition) for the motives expressed.

Next steps?

¶17. (SBU) There is no possible appeal to this decision, but the Embassy reads the decision as one that still allows resubmission of an extradition request, albeit on the cocaine charge only. That said, there will be no chance of success with the current Court unless the AUSA is willing to provide more information about his confidential witnesses. The Embassy does not advocate this approach. Indeed, there's a great danger in such an undertaking, both to the overall process here and to the witnesses themselves. But it is the AUSA's prerogative.

¶18. (C) The Embassy is not aware of any other time that the Supreme Court has rejected an extradition case as lacking because of the use of confidential witnesses. That this concern would be raised at all in this case, where allegations of corruption had already surfaced, is in and of itself troubling. The defendants have moved lots of cash, they made corrupt arrangements with the former Attorney General, and they have been repeatedly in and out of jail over the past four years.

¶19. (C) Of even greater concern is the suggestion made by Dominican Assistant Attorney General for Extraditions and International Affairs Gisela Cueto (STRICTLY PROTECT) that two of the Criminal Chamber judges, Julio Ibarra Rios and Edgar Hernandez Mejia, are known to engage in ex parte meetings with narco-defense attorneys. Ibarra and Hernandez, by virtue of these meetings and other "suspect" behavior (e.g., putting additional burdens on individuals who wish to waive extradition hearings and to return voluntarily to the United States), are thought by various staff of the Attorney General to be in the pocket of unnamed narcotics traffickers.

The Embassy is seeking further information and will take appropriate action following its investigation.

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